

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

LAURENCE LUSTIG

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Unincorporated Business :
Taxes under Article(x) 23 of the :
Tax Law for the Year(s) ~~or Period(s)~~ :
1966 through 1971.

State of New York
County of Albany

John Huhn , being duly sworn, deposes and says that
~~he~~ is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 31st day of March , 1978, ~~he~~ served the within
Notice of Decision by (certified) mail upon Laurence Lustig

(~~representative of~~) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Mr. Laurence Lustig
10 Hendrick South
Irvington-on-Hudson, New York 10533

and by depositing same enclosed in a postpaid properly addressed wrapper in a
(post office or official depository) under the exclusive care and custody of
the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the (~~representative~~
~~of the~~) petitioner herein and that the address set forth on said wrapper is the
last known address of the (~~representative of the~~) petitioner.

Sworn to before me this

31st day of March , 1978

Walker

John Huhn



STATE OF NEW YORK
STATE TAX COMMISSION
TAX APPEALS BUREAU
ALBANY, NEW YORK 12227

JAMES H. TULLY JR., PRESIDENT
MILTON KOERNER
THOMAS H. LYNCH

March 31, 1978

**Mr. Laurence Lustig
10 Hendrick South
Irvington-on-Hudson, New York 10533**

Dear Mr. Lustig:

Please take notice of the **DECISION**
of the State Tax Commission enclosed herewith.

You have now exhausted your right of review at the administrative level. Pursuant to section ~~(x)~~ **722** of the Tax Law, any proceeding in court to review an adverse decision by the State Tax Commission can only be instituted under Article 78 of the Civil Practice Laws and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within **4 months** from the date of this notice.

Inquiries concerning the computation of tax due or refund allowed in accordance with this decision may be addressed to the Deputy Commissioner and Counsel to the New York State Department of Taxation and Finance, Albany, New York 12227. Said inquiries will be referred to the proper authority for reply.

Sincerely,

**Joseph Chyrywaty
Hearing Examiner**

cc: ~~Prisoner's Representative~~

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
LAURENCE LUSTIG	:	DECISION
for Redetermination of a Deficiency or:		
for Refund of Unincorporated Business		
Tax under Article 23 of the Tax Law	:	
for the Years 1966 through 1971.	:	

Petitioner, Laurence Lustig, 10 Hendrick South, Irvington-on-Hudson, New York 10533, filed a petition for redetermination of a deficiency or for refund of unincorporated business tax under Article 23 of the Tax Law for the years 1966 through 1971 (File No. 00478).

A small claims hearing was held before Philip Mercurio, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on June 28, 1977 at 1:15 P.M. The petitioner appeared pro se. The Income Tax Bureau appeared by Peter Crotty, Esq. (Frank Levitt, Esq., of counsel).

ISSUE

Whether any portion of the income received by petitioner from his magazine and book design activities during the years 1966 through 1971 was exempt from unincorporated business tax.

FINDINGS OF FACT

1. Petitioner, Laurence Lustig, and his wife filed New York State income tax returns for the years 1966 through 1971. He did not file New York State unincorporated business tax returns for said years.

2. On June 25, 1973, the Income Tax Bureau issued statements of audit changes against petitioner, Laurence Lustig, imposing unincorporated business tax on the income he received from his activities as a magazine and book designer and design consultant during the years 1966 through 1971. Accordingly, the Income Tax Bureau issued notices of deficiency therefor.

3. Petitioner's business activities as a magazine and book designer and design consultant during the years 1966 through 1971, consisted of the preparation of art work for books and magazines of a design and layout or illustration nature. In the course of his work, he was given books and magazines to read. He then made sketches and renderings for the editors to show how the material could best be presented in printed form, considering illustrative and graphic treatment. In some cases, he was commissioned to carry out the illustration or design. He did not do any work for the advertising of commercial products in books or magazines.

4. Petitioner received a B.S. degree with a major in communications from the College of Arts and Sciences of New York University. He completed three years of postgraduate work at Pratt Institute as a full-time student in the art school. While there, he was trained in drawing, painting, lettering, composition, layout and illustration. He also attended classes at the Art Students League, the Brooklyn Museum Art School and the Phoenix Art Institute. He has received awards from professional societies, trade associations and magazines for his editorial and graphic design of magazines and books. He was a member and participated in the activities of various professional societies. He has written articles on design and has lectured on magazine design before various groups. He has also taught in the evening school of Pratt Institute.

5. Petitioner, Laurence Lustig, maintained that part of his income is specifically exempt from the imposition of unincorporated business tax in accordance with a State Tax Commission ruling dated February 25, 1959 relating to artists, and that, only the balance of his income is subject to unincorporated business tax.

6. Petitioner submitted a schedule of his sources of income during the years 1966 through 1971. On said schedule, fees specifically billed for drawings, illustrations, covers, and other art work (not for advertising purposes) amounted to \$4,385.00, \$1,679.00, \$1,510.00, \$1,475.00, \$1,235.00 and \$1,756.00, respectively, for the years 1966 through 1971. The remainder of the petitioner's income during said years was received in the form of monthly retainers from various book and magazine clients.

7. Petitioner maintained that approximately seventy percent of the monthly retainers consisted of exempt art work, design, illustrations, drawings and writing, not used for the advertising of commercial products. The balance was for art consultation, discussion, art recommendations, and assignment of work to others. However, the petitioner has stated that this was only his estimation and was not based upon separate billing records.

8. During the years in question, petitioner's income was derived solely from personal services rendered by him. Capital was not a material income producing factor.

CONCLUSIONS OF LAW

A. That the fees specifically billed for magazine cartoons, illustrations for books and magazines, covers, drawings and other art work (not used for advertising purposes) in the sums of \$4,385.00, \$1,679.00, \$1,510.00, \$1,475.00, \$1,235.00 and \$1,756.00, respectively, for the years 1966 through 1971, constituted income from the practice of a profession exempt from the imposition of

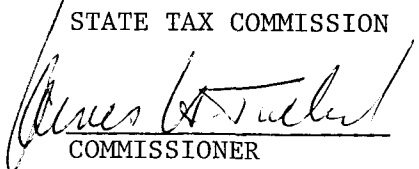
unincorporated business tax in accordance with the meaning and intent of section 703(c) of the Tax Law.

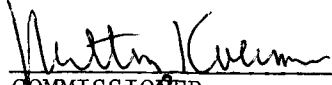
B. That petitioner, Laurence Lustig, has not sustained the burden of proof required to show that the income he received in the form of retainers from his magazine and book design and art work activities was segregated and identifiable from the income he received in connection with advertising activities. Therefore, the combined income he received from retainers (other than the income referred to in Conclusion of Law "A") is subject to unincorporated business tax within the meaning and intent of 20 NYCRR 203.11(b) (4) and its predecessor 20 NYCRR 281.4(f).

C. That the petition of Laurence Lustig is granted to the extent indicated in Conclusion of Law "A," above; that the Income Tax Bureau is hereby directed to accordingly modify the notices of deficiency issued June 25, 1973; that except as so granted, the petition is in all other reports denied. The notices of deficiency, as modified, are sustained, together with such interest as may be lawfully owing.

DATED: Albany, New York
March 31, 1978

STATE TAX COMMISSION


COMMISSIONER


COMMISSIONER


COMMISSIONER